

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 391	DATE	2/28/2002
CASE TITLE	Tommie A. Bivens#2001-00-53866 vs. Village of Oak Lawn		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Order. At this point attorney McPherson is expected to take over, including his making appropriate arrangements for the service of process by the United States Marshal's Service (see Fed. R. Civ. P. ("Rule") 4(c)(2)).
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	SN courtroom deputy's initials	U.S. DISTRICT COURT CLERK 02 MAR - 1 AM 7:56 01 03 07 11	number of notices	Document Number 9
			date docketed	
			docketing deputy initials	
			3/1/2002	
			date mailed notice	
			mailing deputy initials	

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No. 02 C 391

MEMORANDUM ORDER

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under the allegations of the Amended Complaint. Nothing that he has alleged indicates any direct involvement on its part that would avoid the impact of Monell v. Dep't of Social Servs. of City of New York, 436 U.S. 658, 691 (1978) in precluding municipal liability under Section 1983.²

But Oak Lawn will nonetheless be retained in the case at this point for two reasons that are consistent with the generous reading called for by the combination of Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) and Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (per curiam). Here they are:

1. Bivens may, consistently with his allegations, couple his suit against the officers with a comparable state law claim (one that may be predicated on respondeat superior principles) against Oak Lawn itself--see 28 U.S.C. §1367(a).³

2. Even if such a direct claim against Oak Lawn were to prove nonviable, it will be required to stay in the case

² Just as this Court stated in Opinion 3 n.1, it continues to express no view as to the sufficiency of Bivens' claim against the Oak Lawn officers.

³ In terms of timeliness, the incident on which Bivens sues allegedly took place on January 26, 2001 or at some point thereafter. Although the Amended Complaint was received in the Clerk's Office on February 5, 2002, the original Complaint had been received on January 16, 2002. If it were to turn out that a one-year statute of limitations is potentially applicable to any claim against Oak Lawn, the relation-back provisions of Fed. R. Civ. P. 15(c) would have to be considered.

at least long enough to provide any discovery needed to enable Bivens' counsel to obtain the identification of the two presently unnamed Oak Lawn officers.

A handwritten signature in cursive script, appearing to read "Milton I. Shadur".

Milton I. Shadur
Senior United States District Judge

Date: February 28, 2002